

March 14, 1986

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Premerger Notification Office
Federal Trade Commission
Room 301
Washington, D.C. 20580

This is a letter from the
the
Section 106 of the Clayton Act
which requires release under the
Freedom of Information Act

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Dear Mr. Scanlan:

As we discussed on February 21, 1986, I am writing to request an interpretation of the "ordinary course of business" exception to the Hart, Scott, Rodino Act (15 U.S.C. Section 18a(A)(c)) and the FTC's Premerger Notification Rules (Rule 802.1(b)) based upon the following facts.

My client is a bank engaged, among other things, in the origination, sale and servicing of residential mortgages, automobile loans, credit card accounts and other debt instruments. A portion of the bank's loan portfolio consists of debt instruments which the bank solicited and created itself. In addition, the bank's loan portfolio consists of debt instruments which the bank purchased from other financial institutions.

The bank plans to periodically sell parts of its loan portfolio to other financial institutions. In some or all of these transactions, the acquired and acquiring entities would satisfy the size-of-the-person test for the Hart, Scott, Rodino Act and, in some or all cases, the transactions would satisfy the size-of-the-acquisition test for the Hart, Scott, Rodino Act.

These types of transactions are very common in the banking industry and may take several forms. In some instances, the bank will agree in advance to sell debt instruments to another financial institution as those instruments are created or acquired by the bank. In other instances, the bank will agree to sell debt instruments already in its possession. Some transactions will involve the sale of

Andrew Scanlan
Page 2
March 14, 1986

all or most of a particular type of debt instrument in the bank's portfolio -- e.g., all residential mortgages or all automobile loans. Other transactions will involve only a portion of a particular type of instrument or a mix of debt instruments.

In instances where the bank originated the loans, the bank would continue to service the loans after they have been sold to another financial institution. This primarily involves the collection of payments from the debtor and the transmittal of the receipts to the new owner of the loan after the deduction of a service charge.

In all instances, the bank will continue to solicit and create residential mortgages, automobile loans, credit card accounts and the other types of debt instruments it currently solicits. The bank will also continue to purchase such instruments from other financial institutions. Finally, the bank will continue the business of servicing loans.

At any given time, a financial institution purchasing loans from the bank may be acquiring all or substantially all of the bank's portfolio of a particular type of loan. However, the acquiring entity would not be acquiring all or substantially all of the bank's assets or the assets of any operating division of the bank. In addition, the bank would not be discontinuing any line of its loan business. For these reasons, we are of the opinion that the bank's periodic sales of debt instruments to other financial institutions constitute transfers of goods in the ordinary course of business and are exempt from the reporting requirements of the Hart, Scott, Rodino Act.

In our conversation on February 21, you indicated that you agreed with our interpretation of the "ordinary course" exemption, and you asked for a letter which you could circulate to the FTC's other Premerger Specialists. I understand that you will discuss this letter with your colleagues at your earliest convenience and that you will notify me immediately if you disagree with our interpretation of the exemption. Thank you for your cooperation.

Sincerely,

[Redacted Signature]

3/21 TC Scanlan
that the staff agreed that the transaction
in outline above were exempt as incidental. I suggest
that should she be involved in a transaction that offers
to constitute the transfer of a business she might want to call
in and discuss that transaction specifically. scf